THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.36398 of 1998

05.12.2007

Between:

R.Niranjan Reddy, S/o.Late Gopal Reddy
And another

…Petitioners

And

The Special Deputy Collector, Land Acquisition (General), Hyderabad
And another

…Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

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ORDER:

Two petitioners are owners of premises bearing No.5-9-25 in T.S.No.1, Ward No.53, Block-B of Shapurwadi, commonly known as Adarshnagar, Hyderabad, with appurtenant land admeasuring 13,486 Sq.mts. Government of Andhra Pradesh acquired the land under Land Acquisition Act, 1894 (the Act, for brevity) in 1987 for the public purpose, to wit, for construction of Telephone exchange and support services. Even by that time, a portion of the land of petitioner was acquired for road widening. Be that as it is first respondent passed award dated 30.5.1989 in proceedings No.D/452/1986 only to the extent of 3063 Sq.mts. The matter was however referred to Civil Court under Section 30 of the Act for resolving apportionment/entitlement disputes. As the Award was not passed for the balance area of 8812.78 Sq.mts., petitioners filed W.P.No.6472 of 1992. This writ petition was allowed by this Court on 15.9.1993. First respondent herein was directed to pass Award for the balance area. In obedience thereto, first respondent passed Award dated 15.12.1993 in proceedings No.D/452/1986 awarding a sum of Rs.49.00 lacs. This time also the matter was referred under Section 30 of the Act. Petitioners claimed a sum of Rs.4,000/- per Sq.mt before the Land Acquisition Officer (LAO). As the said amount was not granted, petitioners allegedly filed an application before first respondent on 03.2.1994 seeking reference under Section 18 of the Act, in vain. In this writ petition, they seek a Mandamus directing first respondent to refer the Award under Section 18 of the Act for enhancement of the compensation.

First respondent has filed counter affidavit. An additional affidavit is also filed. Receipt of application dated 03.2.1994 for reference under Section 18 of the Act is denied. It is further alleged that the stamp of the office in acknowledgement of the same is said to have been made by Smt.Leelavathi, the then Clerk, is not genuine. It is also alleged that the receipt of application was not entered in the inward register and therefore reference cannot be made as the alleged application for reference has not made within the time.

Learned Counsel for petitioners and learned Assistant Government Pleader for Land Acquisition maintained their positions during the oral arguments. Learned Assistant Government Pleader further submits that when once the application made by the petitioners is not entered in the inward register, it cannot be deemed that proper application is made.

The only question that falls for consideration is whether the application dated 03.2.1994 was made by petitioners seeking reference under Section 18 of the Act for enhancement of the compensation. Learned Counsel for petitioners has placed before this Court office copy of the application dated 03.2.1994. In its first page on the left column, it contains the stamp of the office of first respondent. Though a wild allegation is made that the same appears to be not genuine, such statement made by first respondent cannot be given any importance. There is no law especially under the Act that application seeking reference under Section 18 of the Act shall have to be entered in the inward register and such application can only be considered. A Full Bench of this Court, to which I was a Member, in **District Collector, Kakinada v P.Nagabhushana Rao**[1] considered the questions whether the claimants who failed to protest at the time of receiving the compensation can file application within the stipulated time seeking a reference to the Civil Court and whether acceptance of the amount without protest amounts to waiver of the right to seek reference under Section 18 of the Act. Insofar as the second question in the reference is concerned, it was held as follows.

> Application has to be made within a period of six weeks from the date of award, if the person making the application was present or represented before the Collector at the time of making award. In other cases, application can be made within a period of two months from the date of service of notice from the Collector under Section 12(2) of the Act. In addition to these positive requirements, there is an embargo contained in the second proviso to sub-section (2) of Section 31 of the Act, which says that no person who has received the amount otherwise than under protest shall be entitled to make any application under Section 18.

Insofar as the effect of second proviso under Section 31(2) of the Act is concerned, the Full Bench ruled as under.

> Result of conjoint reading of the second proviso to sub-section (2) of Section 31 and Section 18 of the Act is that an application seeking reference under Section 18 of the Act for determination of the amount of compensation can be made by any person interested, who has not accepted the award and who has not received the amount otherwise than under protest. The second proviso to sub-section (2) of Section 31 is couched in negative form and disables a person from seeking reference under Section 18 of the Act in case the amount of compensation is received by him otherwise than under protest. However, the Act nowhere lays down the method, manner or form in which protest has to be lodged by a person receiving the amount of compensation. On one hand right is conferred by Section 18 of the Act "on any person interested", who has not accepted the award to seek reference to the Court for determination of the amount of compensation, provided application is filed by him within the prescribed period. On the other hand, there is an embargo placed not by the same provision but by the second proviso to sub-section (2) of Section 31 of the Act on such a person, who has received the amount of compensation otherwise than under protest from making such an application for reference under Section 18 of the Act.

Applying the above ratio, this Court overrules the objections of first respondent. Mandamus shall issue to first respondent to make a reference to Civil Court having jurisdiction over the matter within a period of six weeks from the date of receipt a copy of this order. As and when reference is made, Civil Court shall decide the matter in accordance with law. The writ petition is accordingly allowed. No costs.

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(**V.V.S.RAO, J**)

December 05, 2007
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[1] 2003(6) ALD 48 (FB)